IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5874 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

BHARATSINH MOTISINH JADEJA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5874 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MS B.R.GAJJAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 13/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad vide order dated January 22, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 3 cases for the offences falling under Chapter 16 of the IPC are registered against the petitioner which are pending for trial and statements of two witnesses were recorded, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order. Therefore, powers under Section 9(2) of the Act were exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds. Mr P.S.Gondaliya, learned advocate for the petitioner has restricted his arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and therefore, the order of detention is vitiated. Besides this, he has also contended that in the grounds of detention, the detaining authority has considered three cases registered against the petitioner, one is of year 1998, second is of year 1999 and the last case is of 2000 whereas order of detention came to be passed on January 22, 2001 that is after four months of the registration of the last case. So far as the cases registered are concerned, they are very old and therefore, it cannot be said that the petitioner had involved in such activities which were prejudicial to the maintenance of public order. Therefore, on account of delay which is not explained by the detaining authority, the order of detention is vitiated. He has also contended that so far as privilege claimed under Section 9(2) of the Act by not disclosing the identity of the witnesses is concerned, it is not genuine and in absence of affidavit in reply it cannot be called that the privilege claimed by the detaining authority is genuine and therefore on both these grounds, order of detention is vitiated. He, therefore, urged that the petition be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty.

5. Ms. B.R.Gajjar, learned AGP appeared for the respondent State and has opposed the petition by making oral submissions. She contended that the last offence came to be registered against the petitioner on September 25, 2000 and after his release in the said offence he continued his antisocial activities and same were clearly disclosed in the statements of witnesses which were recorded on January 17, 2001 and January 18, 2001. Therefore, in view of his continuous involvement in the alleged illegal activities he should not be set at liberty. More over, the order of detention was passed after considering all the aspects of the matter and more particularly in view of his continuous involvement in the illegal activities. She, therefore, urged that the petition may be rejected.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order, there is no manner of doubt that the last offence against the petitioner came to be registered on September 25, 2000, whereas the impugned order of detention came to be passed on January 22, 2001. But prior to that detaining authority has recorded the statements of two witnesses on January 17, 2001 and January 18, 2001, upon which reliance is placed while passing the order of detention against the petitioner. But no offence is registered against the petitioner on the basis of the said statements and therefore, it is clear that the said statements were recorded with a view to fill up the gap between the date of filing of the last offence against the petitioner and the date of passing the order of detention. Therefore, there is a delay of about four months in passing the impugned order.

8. In the case of ANAND PRAKASH V. STATE OF UP- AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. Similar view is also expressed by this Court in ELESH NANDUBHAI PATEL VS. COMMISSIONER OF POLICE, AHMEDABAD CITY - 1997 (1) GLH 381.

10. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, the last offence

registered against the petitioner on September 25, 2000 for commission of offence under Sections 307, 323 and 114 of IPC could not be a proximate cause and therefore, unexplained delay makes the ground of detention not proximate and vitiates the order of detention itself. So far as the statements of two witnesses which were recorded on January 17, 2001 and January 18, 2001 without disclosing the identity of the witnesses for which privilege under Section 9(2) of the Act is claimed, cannot be called genuine in absence of affidavit in reply by the detaining authority. Therefore, on the aforesaid two grounds the order of detention deserves to be quashed and set aside and the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 22, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*